

GEOSEARCH, INC.

IBLA 80-198

80-213

80-218

Decided July 15, 1980

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, dismissing protests with respect to oil and gas leases W 61207, W 63721, and W 67667.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

Protests against the issuance of oil and gas leases are properly dismissed where the protestant fails to show with competent evidence that there have been violations of the leasing regulations, that the successful drawees should have been disqualified, or that the leases should have been cancelled.

2. Regulations: Binding on the Secretary -- Regulations: Force and Effect as Law

The Secretary of the Interior is bound by his duly promulgated regulations and such regulations have the force and effect of law.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant;
George W. Speer, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Geosearch, Inc., appeals from decisions dated November 14 and 15, 1979, by the Wyoming State Office, Bureau of Land Management (BLM), which dismissed its protests with respect to the above-listed oil and gas leases. 1/

1/ Because of similarity of facts and issues these cases have been consolidated for decision.

W 61207 was issued effective December 1, 1977; W 63721 was issued effective July 1, 1978; and W 67667 was issued effective June 1, 1979.

Appellant's challenges to the issuance of these leases were filed in October 1979, and alleged violations of filing regulations 43 CFR 3102.7 and 3112.5-2. Appellant stands in the position of the second priority drawees whose interests it acquired by letter agreements of August 6, 1979.

Although appellant's challenges were in the form of protests, two of the decisions appealed from W 61207 (IBLA 80-198) and W 63721 (IBLA 80-213) dismissed his "private contests." The decision in W 61207 states as follows:

Under 43 CFR 4.450-1 (1978), a private contest may only be initiated "for any reason not shown by the records of the Bureau of Land Management." As you can see from the enclosed copy of a letter from the #1 drawee of this lease, our records contradict your allegations of violations of 43 CFR 3102 and 3112.5-2 (1978). No prima facie evidence to the contrary has been presented.

In W 67667 (IBLA 80-218), BLM dismissed the protest on the ground that it had returned the second and third priority drawing entry cards, that no appeals were filed, and that those offers were no longer viable. BLM further held that appellant lacked standing to file a protest, and that in any case no violations of 43 CFR 3102.7 or 3112.5-2 had been demonstrated.

Appellant argues on appeal to this Board that BLM erred in classifying its protests as contests and dismissing them as such. Appellant further argues that BLM erred in finding no violations of 43 CFR 3102.7 or 43 CFR 3112.5-2. Appellant asserts that an undisclosed relationship existed between the first drawees and other persons by virtue of which such persons had an interest in the first drawees' leases. Appellant complains that BLM failed to properly investigate these relationships, that more diligent inquiry might have shown the alleged violations to exist, and that if violations existed, the leases should be cancelled and awarded to appellant.

Appellant also questions BLM's diligence in returning the DEC's intimating that due process may not have been preserved, and that 43 CFR 3112.2-1(a)(4) may be in violation of the due process requirements of the Fifth amendment of the United States Constitution. Appellant contends that it should not be deprived of its remedy of either filing a private contest or protest in these matters.

[1, 2] The disposition of these appeals does not turn on the classification of appellant's challenges either as contests or protests, 2/ but on whether the allegations of improprieties are well founded. We conclude they are not. The case file in IBLA 80-198 reveals that the first priority drawee assigned lease W 61207 to R. K. Cramer, with the assignment approved effective December 1, 1977. The lease underwent a further assignment to Cities Service Company, effective February 1, 1978. However, there is no competent evidence tending to support appellant's allegations of irregularities or improprieties.

Nor has appellant been deprived of any rights it may have had through action by BLM. Appellant challenged the issuance of these leases, BLM responded to those challenges by inquiring of the No. 1 drawees whether violations of the filing regulations may have attended the issuance of the leases. 3/ It concluded that none existed and therefore dismissed the protests. Appellant's arguments are in the realm of conjecture and speculation. It has presented no competent evidence of violations of the leasing regulations, which, if established, would disqualify the successful drawees or require cancellation of the leases. Consequently, the second drawees' offers need not be considered. Geosearch, Inc., 41 IBLA 291 (1979); Geosearch, Inc., 40 IBLA 267 (1979).

Appellant's allegation regarding the constitutionality of the procedure prescribed by 43 CFR 3112.2-1(a)(4), which provides for the return of DEC's to unsuccessful drawees, is not apropos. The Board of Land Appeals has no authority to declare invalid duly promulgated regulations which have the force and effect of law. David V. Udy, 45 IBLA 389 (1980); Exxon Co., U.S.A., 45 IBLA 313 (1980).

More particularly, Geosearch in essence asserts that BLM's return of the second and third drawees' simultaneous filing cards did not comport with the Fifth Amendment procedural due process requirement of notice and opportunity for hearing because the drawees were not given notice in the form of a decision or a registered or certified letter, indicating that any rights the second and third drawees might have, in respect to any given parcel, would be eliminated if they did not appeal within 30 days after receipt of the returned filing cards.

2/ We do not discuss the question whether a contest or protest could lie in the case at bar. However, we note that 43 CFR 4.450-2 permits protests to be filed "by any person for any action proposed to be taken in any proceeding before the Bureau." (Emphasis supplied.) It seems clear, however, that appellant did not intend to have its objections treated as a contest.

3/ All No. 1 drawees, upon inquiry, stated that they had no agreement with their assignees prior to filing and that they were free to sell to whomever they chose.

43 CFR 3112.2-1(a)(4) provides that "[u]nsuccessful drawees will be notified by the return of their respective entry cards."

That regulation must be read in pari materia with 43 CFR 4.410 which affords a right of appeal to the Board, with exceptions not pertinent here, to "any party to a case who is adversely affected by a decision of an office of the Bureau of Land Management * * *." The return of an entry card under 43 CFR 3112.2-1(a)(4) constitutes a decision so adversely affecting a party, i.e., a rejection of the offer.

The case files are devoid of any official documents indicating all the No. 2 drawees were provided notice of rejection by return of their DEC's. However, no party has alleged a failure to receive their DEC's drawn No. 2. In any event, we have considered appellant's objections on their merits and if there were a breach of procedure, appellant has not been injured thereby.

The records indicate the existence of bona fide purchasers for value of the leases in issue. Even assuming, arguendo, deficiencies in the application process which might have rendered the leases subject to cancellation prior to the assignments, it appears that 30 U.S.C. § 184(h)(2) (1976), bars such cancellation. Geosearch, Inc., 47 IBLA 39 (1980).

We conclude that the protests were properly dismissed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Frederick Fishman
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

